

Service Date: June 6, 1986

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of BURLINGTON NORTHERN RAILROAD)	
COMPANY to trialize agency)	DOCKET NO. T-8808
operations at Sidney, Fairview and)	
Circle, Montana.)	ORDER NO. 5705

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Charles C. Dearden, Burlington Northern Railroad Company, 1201
Norwest Center, 175 North 27th Street, Billings, Montana 59101

FOR THE COMMISSION:

Geralyn Driscoll, Staff Attorney, 2701 Prospect Avenue,
Helena, Montana 59620

BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

BACKGROUND

1. On September 5, 1985, Burlington Northern Railroad Company (BN), 175 North 27th Street, Billings, Montana 59101, petitioned the Montana Public Service Commission (MPSC or Commission) for authority to trialize agency operations at Sidney, Fairview and Circle, Montana. This petition seeks MPSC authority to provide agency service to all three locations utilizing one agent stationed at Sidney, Montana. The agent would provide service to Circle and Fairview by travelling to Circle twice a month and to Fairview once a week.

2. After proper notice, the MPSC conducted public hearings on this petition on January 21, 1986 in Circle and January 22, 1986 in Sidney. The hearing in Circle was to receive public testimony concerning the proposed trialization. BN presented testimony supporting its petition at the public hearing in Sidney.

FINDINGS OF FACT, ANALYSIS, DISCUSSION

3. In 1985 the official population of Sidney was 5,276 and the official population of Fairview was 1,366. Both communities are in Richland County. The population of Circle, the last agency in McCone County, is 931.

4. Section 69-14-202, MCA, states:

(1) Every person, corporation, or association operating a railroad in the state shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers

in at least on location, preferably the county seat, in each county through which the line of the railway passes and at any point upon the line of such railway where there is a city or town having a population, according to the last federal census, of not less than 1,000; provided, however that this section shall not require the maintenance and staffing of such facilities in any county or at any city or town in which such facilities were not maintained and staffed on July 1, 1969.

(2) Nothing in this section authorizes the discontinuance of any facility presently established in any city, town, or other location having a population of less than 1,000 without a hearing before the public service commission, as provided by law.

5. In Burlington Northern Railroad v. Dept. of Public Service, 763 F.2d 1106, (9th Cir. 1985) (hereinafter BN v. PSC), the Court of Appeals held that §69-14-202, MCA, does not violate the commerce, due process or equal protection clauses of the United States Constitution. In that case the MPSC, relying on 69-14-202, MCA, had rejected, without a hearing, BN's petition to close, consolidate or discontinue operations in Browning, Whitehall, Big Timber, Columbus, Wibaux, Circle and Terry. Taking judicial notice of communities with populations of 1,000 or more, this Commission determined that there was no controversy to be heard because 69-14-202, MCA, mandated agency service in communities of 1,000 people. BN's constitutional challenge of the statute on its face and as applied was rejected by the Ninth Circuit.

6. Prior to and after the resolution of BN v. PSC, supra, this Commission distinguished between the discontinuance or

centralization of agencies and the dualization, trialization, etc. of agencies. In the past, the Commission rejected petitions to centralize agency service at one agency while closing others, but accepted and held hearings on petitions for dualization. By permitting dualization this Commission allowed one agent to provide agency service at two or more agencies. It was the MPSC's policy that a dualized agency could fulfill the requirements of §69-14-202, MCA, if a less-than-full-time agent could satisfy the requirements of public convenience and necessity. This was based on the MPSC's interpretation that the legislative requirement "shall maintain and staff facilities for shipment and delivery of freight" stated in §69-14-202, MCA, was satisfied, in limited circumstances by an agent not permanently stationed in a community but serving it on a fixed schedule.

7. Experience with this policy has convinced this Commission that to satisfy the legislative mandate to "maintain and staff facilities" a full time agent and agency facilities are required.

Dualization, which was presented to this Commission as a cost saving measure that could still maintain adequate agency service to shippers, has become a thinly veiled effort by BN to cease to staff and maintain facilities as required by Montana law. This does not satisfy the legislative intent of §69-14-202, MCA.

8. The threshold question this Commission must consider in acting on petitions to combine agencies is whether the service to

be offered will satisfy the standard of public convenience and necessity. The legislature, in §69-14-202, MCA, has determined that to satisfy the minimum requirements of public convenience and necessity every railroad operating in the state must maintain an agency and agent in every city or town through which a railway line passes that has either 1,000 or more people or is the last agency in the county.

CONCLUSIONS OF LAW

1. The MPSC is the administrative agency the Montana legislature has charged with the responsibility for regulating railroads operations. Section 69-14-111, MCA, grants the MPSC

... the general supervision of all railroads
... engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said commission and within its power and authority under the provisions of this chapter.

To comply with its statutory duty to regulate railroads the legislature has granted the MPSC the statutory power

... to compel any and all railroads subject hereto to provide, maintain, and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public and to provide and maintain suitable waiting rooms for passengers and suitable rooms for freight and baggage at all stations. Section 69-14-117, MCA.

2. Section 69-14-202, MCA, requires every railroad operating in Montana to maintain and staff facilities for shipment and

deliver of freight in, at least, every city or town through which a railway line passes that has either 1,000 or more people or is the last agency in the county. This statute precludes the Montana Public Service Commission from considering petitions to close, dualize or combine agency services in any community of 1,000 or more people or in any community that has the last agency in the county.

3. The Montana Public Service Commission is not precluded from considering the effect on public convenience and necessity of the closure or combination of any agency neither located in a community of more than 1,000 people nor the last agency in a county.

ORDER

The Petition to trialize agency services at Circle, Fairview and Sidney, Montana is hereby dismissed.

DONE AND DATED this 6th day of June, 1986 by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner
(Voting to Dissent)

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner
(Voting to Dissent)

ATTEST:

Trenna Scoffield
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.